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09/715,586	11/17/2000	Peter Worthington Hamilton	5922R2C	5737

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/715,586
Filing Date: November 17, 2000
Appellant(s): WORTHINGTON HAMILTON ET AL.

David K. Mattheis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/20/2007 appealing from the Office action mailed 11/7/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

US Appl. No. 09/716,740 has been affirmed on appeal.

US Appl. No. 10/701,039 has been affirmed on appeal and abandoned.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: the Wilbur reference is removed from the grounds of rejection, because its removal simplifies the issues to be reviewed.

NEW GROUND(S) OF REJECTION

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Claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103, 105-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders [US 5,344,693] in view of admitted prior art.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

Claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103, 105-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur [US 2338749] in view of in view of Sanders [US 5344693] and Applicants' admitted prior art.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,344,693

Sanders

9-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103, 105-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanders [US 5344693] in view of admitted prior art.

Sanders' invention relates to a spacing means for an adhesive web of flexible plastic film. The spacing means is capable of maintaining separation of a surface carrying a pressure sensitive adhesive and an adjacent surface until it is required that the two surfaces shall unite one with another by the adhesive [col. 1, ll. 10-13 and 60-62; col. 4, ll. 45]. Fig. 4 shows the transverse cross-section of an embodiment of a spacing means having three dimensional non-adherent

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protrusions and the thickness of adhesive 29 is less than the height of spacing means 28. Figs. 7 and 11 show embodiments in which various spacing means can be configured as being surrounded by continuous pressure sensitive adhesive [col. 2, ll. 16-26; col. 4, ll. 19-24]. The pressure sensitive adhesive may be peelable or permanent [col. 5, ll. 60-61].

For claims 1, 14, 15, 41, 54, 55, 66, 81, 95, 98, 101, 103 and 106, Sanders' spacing means shown in Figs 4, 7 and 11 clearly read on the recited features of "non-porous", "active side exhibiting an adhesion peel force after activation greater than an adhesion peel force prior to activation", "adhesive disposed continuously", "sheet is linerless" of claimed invention. Sanders is silent about modifying a storage wrapper film with the spacing means. However, since Sanders' invention relates to a flexible plastic film, and since applicants have admitted that flexible conformable (i.e., having sufficiently small resiliency that does not exert undue restorative forces that would cause the web break the contact to a surface) polymer webs with clinging character for forming a closure for a container are known [specification page 1, lines 18-35], it would have been obvious to one of ordinary skill in the art of flexible film to modify the admitted conventional cling wrapper films with Sanders' spacing means, motivated by the desire to obtain storage wrappers with an improved sealing strength upon adhesive activation. Regarding the use limitations that "activatable by a tensile force" and "activated by compression against a target surface", since the prior art render the structure of the instant invention obvious, the type of workable force (either tensile or compressive force) for adhesion activation are deemed to be inherently provided by the same structure. Regarding the limitation "form a continuous seal", since Sanders teaches a layer of continuous adhesive layer, forming a continuous seal after activation is obviously provided for sealing a container.

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For claims 2, 11, 47, 49, 51, 99, 102 and 107, regarding the amount of activation force, the adhesion peel force and barrier seal against a target surface, since the combined teachings of prior art render the general structural and composition features of instant invention obvious, they are deemed to be obvious routine optimizations to one of ordinary skill in the art to practice the combined teachings of prior art for the same end use.

For claims 10, 50, 97 and 105, since the optional use condition fails to limit the structure and/or composition, it does not constitute a limitation in any patentable sense.

For claims 12, 52, 100 and 108, since forming a double sided adhesive film is old and well known in the art of flexible adhesive sheet, it would have been obvious to one of ordinary skill in the art to modify an adhesive storage wrapper by coating adhesives on both sides, motivated by the desire to obtain a neatly sealed wrapper surround a container without loose film hanging away from the side of the container.

For claims 16 and 56, the admitted prior art shows that polymeric materials such as PVC, PVDC and PE are commonly used to form cling films [specification page 1, 4th paragraph], and these polymers are inherently substantially translucent or transparent materials.

For claim 48, by definition, the term “tensile force” interpreted as a force in a direction parallel to the sheet material.

For claims 17 and 57, Sanders’ Figs 4, 7 and 11 show embodiments read on the claimed features of “a plurality of three dimensional non-adherent protrusions”, “pressure-sensitive adhesive surrounding protrusions” and “adhesive having a thickness less than the height of the protrusions”.

For claims 18 and 58, applicants admitted that the clinging (adhering) character of clinging film are provided by adding additives such as plasticizers, tackifiers, etc., to the plastic films [specification, pp. 1]. Since Sanders teaches that the spacing means is capable of maintaining separation prior to activation, and the adhesive layer is capable of providing adhesive sealing, it would have been obvious to one of ordinary skill in the art of a storage wrapper to eliminate the cling modifying chemical components from the base sheet material, motivated by the desire to reduce the product cost.

(10) Response to Argument

Since the Wilbur reference has been withdrawn, appellants' arguments related to Wilbur reference are moot.

Appellants argue [Brief page 3] that despite a specific request by the appellant, the examiner has not provided any support for his position that the limitation "activatable by a tensile force" need not be addressed as it does not constitute a limitation. However, the examiner has clearly provided the reasoning at pages 5-6 in the Final action mailed 11/7/2006 that the term "activatable by a tensile force" is interpreted as an optional use limitation, hence there is no requirement for the prior art to provide or account for the limitation, because it does not constitute a limitation in any patentable sense. The examiner also points out that even if this limitation is given patentable weight, since the spacing means of Sanders is structurally configured the same as the claimed invention, type of workable force (either tensile or compressive force) for adhesion activation are deemed to be inherently provided by the same structure. Further, the examiner has noted that appellants failed to provide any evidence or reasoning of why the same structure, when taught by Sanders, would be incapable of being

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activatable by a tensile force. Appellants' argument ignores the examiner's response in prior Office action.

Appellants argue [page 4] that since the examiner's reasoning for "activatable by a tensile force" reads too much into the reference, because the reference provides only that the substance and surface may contact each other by deforming either the substrate, the surface or both; the nature of the deformation and the forces causing this deformation are not described; and further argue that nothing in the Sanders reference teaches or suggests that the application of a tensile force to the substrate will successfully lead to contact between the substance and the surface. However, it is unseen how the use limitation of activation forces materially renders a distinct structure which is anything different from Sanders' spacing means. The examiner maintains that since the combined teachings of prior art render the structure of claimed invention obvious, workable activation forces are deemed to be inherently provided for the same structure.

Appellants argue that the examiner's combination of prior art is improper, because there is no reasonable expectation of success that such a combination may be produced, and further point out that the flexible nature of cling film arises from the monolayer nature of cling film, but there is no support other than the speculation of the examiner that the combination of prior art can be achieved and will possess all of the limitations of the invention as claimed. However, since both prior art are from the same field of endeavor, i.e., flexible films, their teachings are combinable, with a reasonable expectation of success at the time the claimed invention was made. In particular, Sanders has expressly taught that the film modified with spacing means remains flexible. Nothing whatsoever would have prevented one of ordinary skill in the art of flexible film to combine the teachings of the prior art. Further, since the combined teachings

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render the structure and composition of the claimed invention obvious, the various claimed properties are deemed to be obvious routine optimizations to one of ordinary skill in the art, dictated by the desired properties for the same end use.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Victor S Chang/
Primary Examiner, Art Unit 1771

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Gregory Mills/
Gregory Mills
Quality Assurance Specialist
TC 1700

Conferees:

/Terrel Morris/
Terrel Morris
Supervisory Patent Examiner
Group Art Unit 1771

/Carol Chaney/
Carol Chaney
Supervisory Patent Examiner
Art Unit 1773

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